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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re M.P., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

E061933

(Super.Ct.No. RIJ1201008)

OPINION

APPEAL from the Superior Court of Riverside County. Harry A. Staley, Judge.  
(Retired Judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI,  
§ 6 of the Cal. Const.) Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Gregory P. Priamos, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant M.G. (Father) appeals from the juvenile court's order terminating his parental rights as to his 12-year-old son M.P. On appeal, Father argues the juvenile court erred in terminating his parental rights in the absence of evidence suggesting he was an unfit parent. We reject this contention and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

When the matter came to the attention of the Riverside County Department of Public Social Services (DPSS), the child was being cared for by his maternal grandmother S.P. (grandmother). S.P. (Mother) was in an inpatient substance abuse program.<sup>2</sup> Father did not have stable housing but had secured an order for weekend visits with his child, and was in the process of securing custody rights. The child had lived with the grandmother most of his life. However, the grandmother was not the child's legal guardian.<sup>3</sup>

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<sup>1</sup> The factual and procedural background up until the contested jurisdictional/dispositional hearing is taken from this court's unpublished opinion in Father's prior appeal. (*In re M.P.* (Jan. 23, 2014, E057504) [nonpub. opn.] )

<sup>2</sup> Neither the maternal grandmother nor Mother is a party to this appeal.

<sup>3</sup> At a review hearing, the juvenile court found that the grandmother had custody of the child pursuant to a temporary family law court order, and was not entitled to standing in the juvenile court proceeding.

On August 9, 2012, DPSS received a referral alleging general neglect of the child when he visits his father every weekend. The reporting party was concerned about the environments Father subjected the child to, such as where there was a lot of drinking, fighting, and lack of food, and how it had affected the child. The reporting party noted that there had been a noticeable change in the child since June 2012; that the child had a bald spot on the top of his head; and that the child was stressed when he was with his father. The reporting party also stated that Father at times did not supervise the child; that Father was unemployed and undocumented; and that Father had left the child alone when he believed Immigration and Naturalization Services (INS) was looking for him. The reporting party further asserted that the child had stated that he was afraid when he goes on visits with Father and that the child's behavior changed after the visits, at times becoming aggressive. The child had been in counseling for the last three to four months and had recently begun " 'acting up.' "

The grandmother reported that Father began weekend visits with the child on May 17, 2012, and since then the child had ended up in the hospital " 'every weekend.' " Specifically, she asserted that the child was taken to a hospital via ambulance after suffering heat exhaustion at an air show. On other occasions, the child fell in a pothole and hurt his leg while at Father's relative's house; and at another relative's home, the child tripped over a bike tire in the dark and was taken to a hospital. An X-ray showed that the child had a torn muscle and a sprain, resulting in a leg brace and crutches for the child. And on August 10, 2012, the child had hernia surgery.

The child reported that Father failed to give him a birthday party as promised and instead took him to a restaurant and left him unattended while he went to the bathroom and spoke on his cellular telephone. The child also stated that Father took him to Father's half brother's house where there was a lot of screaming and yelling. The child further asserted that he is verbally harassed and called derogatory names by paternal relatives; that they talk about the court case when they are not supposed to; and that they smoke cigarettes around him even though he has asthma. The child feels that his father does not spend time with him and does not watch him. He is afraid he will get hurt and be left alone. He further noted that his father drives with him in the car even though Father does not have a driver's license. The child denied seeing drug use or being inappropriately touched while visiting Father.

On August 24, 2012, the social worker spoke with the reporting party. The reporting party did not believe Father is a "bad father," but was concerned about the environment to which Father subjected the child. The reporting party was unsure whether the child's hair loss was due to stress or a medical condition.

On August 31, 2012, another referral was received by DPSS alleging general neglect and physical abuse of the child. The child reported that Father had hit him with an open hand on his back and yelled and cursed at him because he did not want to go to a paternal cousins' home. The child stated that he was afraid of Father and that Father almost went off the road while driving. The child does not like to go to the paternal

cousins' home because they yell at him and he had seen a cousin exhibit signs of drug use.

On September 4, 2012, a third referral was received by DPSS alleging physical and sexual abuse of the child. When the child was taken for medical treatment for his hair loss and eczema, he reported that the hair loss was due to abuse when he visited Father. He stated that Father had verbally and physically abused him and that Father had fondled him while he showered with him. The child further stated that Father had touched him on his private parts about 16 times, beginning when he was seven years old, and that Father had taken pictures of him while he was going to the bathroom. He was not sure if Father touched him on purpose though. The child also noted that the grandmother had not allowed him to see his father in the past four weeks.

Father explained to the social worker that the grandmother is “ ‘putting things in [the child's] head,’ ” and making the child his “enemy.” He also stated that the allegations against him are false. He further reported that he loves his son and wants him; that there is no fighting around the child when he takes him to his relatives' homes; that he stayed with his brother on weekends to ensure the child had a safe and comfortable environment; and that the child always had food to eat. Father admitted that the child had passed out due to heat exhaustion and explained that the child was in a hurry to get to the air show and he therefore did not stop to get bottles of water. He also admitted to not having a driver's license and driving the child in the car to a McDonald's, Lake Perris, and the air show.

Mother had a history of abusing drugs and had been in a drug rehabilitation center since February 2012. She last saw the child on August 12, 2012, and was concerned about the child's mental health.

On September 26, 2012, the social worker was informed that the family law judge ordered the child be removed from the grandmother and Father. The family law judge stated that it appeared the grandmother was alienating the child from Father. The grandmother was upset by the order and denied coaching the child or denying Father access to the child.

On September 28, 2012, a petition was filed on behalf of the child pursuant to Welfare and Institutions Code<sup>4</sup> section 300, subdivisions (b) (failure to protect), (d) (sexual abuse), and (g) (no provision for support). Specifically, the petition alleged that Father had inappropriately touched the child on his private parts and taken pictures of him while he used the bathroom (allegations b-1 and d-1); that Father administered inappropriate discipline, including but not limited to hitting the child on his back with an open hand (allegation b-2); that Father demonstrated a limited ability to provide a safe environment for the child, such as driving with the child without a license (allegation b-3); that Mother had a history of abusing controlled substances (allegation b-4); and that Mother was unable to provide care and support for the child (allegation g-1).

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<sup>4</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

At the October 1, 2012 detention hearing, the child was formally removed from his parents. The court ordered the child remain in the grandmother's home based on various conditions.

Law enforcement investigated the sexual and physical abuse allegations made against Father and found the evidence insufficient to take the matter further.

The child was friendly and energetic. He appeared comfortable living with his grandmother and older half brother, and informed the social worker that he wanted to remain placed with his grandmother. He wanted to have visits with his parents. He eventually wanted to live with his mother once she got better. The child suffered from an auto-immune disorder, and was scheduled to have an MRI on his left leg to determine whether he had cancer.

The social worker recommended that the child remain in the grandmother's care, since it was the only home the child knew. The social worker noted that although it appeared the grandmother may have been alienating the child from his parents, her home was stable and she met the child's education, physical, and medical needs. The grandmother agreed to participate in services.

The contested jurisdictional/dispositional hearing was held on October 30, 2012. Father, Mother, the grandmother, and the child were present. At that time, the court heard from the child in chambers regarding his wishes for visitations with his parents. Following brief arguments from counsel, the juvenile court found allegations b-3, b-4, and g-1 true as alleged in the petition; and not true allegations b-1, b-2, and d-1. The

only allegation found true against Father was the allegation that Father had demonstrated a limited ability to provide a safe environment for the child, such as driving with the child without a license. The child was declared a dependent of the court and removed from his parents' care. The child was to remain with the grandmother on an extended visit. The parents were provided with reunification services and ordered to participate in their court-approved case plans. Father was also provided with unsupervised day visits.

On October 31, 2012, Father filed a notice of appeal, challenging the jurisdictional and dispositional findings. On January 23, 2014, this court filed an unpublished opinion affirming the juvenile court's findings. (*In re M.P.*, *supra*, E057504.)

On November 27, 2012, the juvenile court granted the grandmother's request for de facto parent status.

On November 27, 2012, the juvenile court ordered Mother to have visits from Friday evening to Saturday evening, and Father was ordered to have visits on Sundays from 9:00 a.m. to 7:00 p.m. Although Father was entitled to visits on both Sundays and Saturdays, he agreed to forfeit his Saturday visits so that he could take advantage of opportunities to work. DPSS was authorized to increase Father's visitation as deemed appropriate. On February 6, 2013, the visitation order was modified by mutual agreement so that visitation was scheduled to end at 5:00 p.m. rather than 7:00 p.m.

During the initial six-month reunification period, Father complied with his case plan. He completed a parenting education class and consistently participated in individual and conjoint counseling. Father also consistently visited his child. At first,



Father used a relative's home as a place for visiting the child. The child reported that he did not like that venue because the relatives yelled at him, there was no food in the home, and there were bugs. However, when the social worker visited the home, she could not confirm the child's allegations. The social worker reported that the relatives had presented as "a very nice couple," and that a tour of the home revealed it to be clean with adequate food and no signs of pests. The child also informed the social worker that his visits with Father were going well, but that he wanted a supervisor to accompany them on visits. Father went along with having a supervisor because he did not want to upset his child.

As time progressed, both the child and Father reported that the quality of the visits had improved. Father had utilized the bus system when visiting the child because he did not have a valid driver's license. The child reported that the visits went well, but stated that he wished Father knew more about him. The visits involved Father and the child shopping, walking around at malls, or visiting Father's extended family members and friends. Father expressed a desire to participate in other activities with the child, such as equestrian events or church. Father also wanted to share more of his Mexican culture with the child. The social worker noted that Father had demonstrated that he was able to take appropriate measures to provide care for the child during visitation and that Father felt manipulated by the child during the visits at times and was reluctant to choose an activity other than what the child requested. Father stated that he was fearful that if he did not cater to the child's wishes, the child would become upset and continue to make

allegations about the unfounded sexual abuse. Father also reported that the grandmother would call Father's cellular phone up to four times during visits to speak with the child, which the social worker addressed with the grandmother. Additionally, the social worker addressed with Father the child's need for more structure and planning during visits.

Father resided with friends or extended family and was unable to obtain stable housing. Although Father had worked odd construction, gardening, and equestrian jobs, his income varied from \$100 to \$300 each week, and challenges associated with his immigration status prevented him from securing full-time work. Father had also been reluctant to provide DPSS with a home address because he was afraid the grandmother would attempt to have him deported.

The grandmother continued to maintain that Father had sexually abused the child, and had repeatedly brought up the alleged abuse, Father's immigration status, and Father's history of driving without a license. The grandmother stated that DPSS and Father were “ ‘teaching [the child] that it is okay to touch children, it is okay to lie, that it is okay to tolerate abuse of children and adults, and it is okay to buy fake ID's.’ ” The grandmother had made additional allegations against Father. For example, after failing to comply with the social worker's request to send the child's inhaler with him to visits, the grandmother complained that Father would use the child's asthma inhaler or would “ ‘overdose’ ” the child. On another occasion, the grandmother claimed that she had been physically attacked by a man in a “ ‘hoodie sweatshirt,’ ” and although she did not see the man's face, she knew it was Father by the “way he smelled.” The social worker believed

that the grandmother had been discussing the case and allegations in front of the child based on the child exhibiting unusual “hyper-vigilance about issues and concerns that most children his age would not recognize.”

The social worker was also concerned that the grandmother had ruminated unusually about the child’s health and medical conditions, causing the child to be unnecessarily aware and concerned about his health. The grandmother had regularly claimed the child had an auto-immune disorder with the potential to attack his organs. In 2012, after an abnormality was detected on an x-ray on the child’s leg, the grandmother had repeatedly claimed the child may have leg cancer, until the reason for the abnormality was revealed. Additionally, the grandmother had not consistently participated in general counseling as ordered by the court, and had led her therapist to believe that the court had sustained the sexual abuse allegations. The grandmother informed the social worker that she did not need therapy and that the social worker was forcing her to go. The grandmother, however, had completed a parenting education program, and was coming to terms with improving her relationship with the parents.

The child had lived with the grandmother and stepgrandfather since he was a baby, and her home was all he had known. Father reported that his relationship with the grandmother had improved and that they were in family therapy to resolve the complications of co-parenting. Father had admiration and respect for the stepgrandfather and was taking steps to preserve his relationship with him. Father also indicated in therapy that he believed it was in the child’s best interest to remain living with his

grandparents. The child reported in therapy that he wanted to remain living with his grandparents and that he wanted visitation with Father but did not desire overnight visitation.

On May 1, 2013, Father filed a section 388 petition requesting the child be removed from the grandmother's home and placed in a "neutral foster home" or with Father. The court scheduled a hearing but Father later reported that he did not want the child removed from the grandmother and Father's attorney withdrew the petition.

On April 30, 2013, the juvenile court authorized a home evaluation for Father. However, Father was concerned that the home evaluation process and disclosure of his physical address would increase the possibility that the grandmother would have Father deported to Mexico, despite knowing the address would remain confidential. Father preferred to avoid overnight visits in hopes that this would lessen his chances of deportation and continued visitation with his child. Due to Father's reluctance to facilitate a home evaluation, no home evaluation was conducted.

The social worker believed that the family needed more time to participate in services to learn co-parenting techniques, appropriate boundaries, and each person's role as it related to the child. The social worker reported that the strain between the grandmother, Father, and Mother had slightly improved but was not resolved. The grandmother's "insistence on talking about past issues" was reported to be "destructive and harmful to the fostering of a healthy co-parenting relationship between the caregiver, the mother and the father." However, despite this concern, it was evident that the child

was bonded to the grandmother and stepgrandfather and that the child was comfortable in the grandmother's home. The child's therapist reported that the child was not ready for overnight visits with Father; that it was in the child's best interest to remain with his grandparents; and that it would be detrimental for any changes of placement to occur at the time. The therapist also recommended that the case be continued for another six months.

On June 4, 2013, the juvenile court continued reunification services for the parents and set a 12-month review hearing.

During the second reunification period, Father initially continued to visit the child. However, the child continued to struggle with anxiety and stated that he did not want to live with Father and that he felt uncomfortable around his father during visitation. The child also complained that the visits were too long and that Father spent most of his time talking to friends on his cell phone. The child had further maintained that Father had sexually abused him and had expressed he was frustrated because his social workers did not believe him. When the social worker inquired about the abuse, the child stated that Father had wrapped his hand around his genitals when the child was between six and seven years old. The child further asserted that Father did not say anything when he touched him and did not ask the child to touch him back. The child also asserted that Father had a " 'mental disorder' " and that Father had followed him and Mother into a store with a machete in the past. The social worker reported that the child's body language showed that he was uncomfortable with Father touching him. The child later

reported that he did not allow Father to hug or touch him. The social worker did not believe that the child was being coached by the grandparents.

The two therapists who had supervised the conjoint counseling sessions found the child's sexual abuse allegations to be credible, noting that the child had intentionally made sure his visitation with Father occurred in public places to ensure his own safety. The therapists also reported that the child had confronted Father with the sexual abuse allegations but became upset when Father denied the allegations. One of the therapists also reported that Father would speak in Spanish during conjoint therapy sessions, interpreting this as a sign that Father was not interested in reunifying with the child. Both therapists opined that the child was bonded to the grandmother and scared of Father and that it would be harmful to remove the child from the grandmother's care.

Father only wanted to participate in conjoint counseling with the child if the therapist was bilingual. The child wanted conjoint counseling with Father to confront him about the sexual abuse allegations. Father failed to appear for the first counseling session with the bilingual therapist, and did not call to reschedule. In addition, Father had failed to maintain contact with DPSS. The social worker was concerned about Father's motives for pursuing reunification with the child, and suggested that Father was pursuing reunification in an effort to gain United States citizenship. The social worker explained that Father had not provided DPSS with evidence of his income or a suitable home and that the child had reported that Father repeatedly asked him to sign some papers relating to citizenship when he turned 18.

On November 21, 2013, the child wrote a letter to the juvenile court stating that he did not want any visits with Father because he did not feel safe in his care but that he was open to telephone contact with Father. The child also expressed his frustrations with DPSS, the juvenile court, and his parents in regards to not believing him about the sexual abuse allegations. In October 2013, the social worker reduced Father's visits with the child to two hours in a public setting to help relieve the child's anxiety. The child was thankful the visitation was being reduced. Father was upset by the child's ongoing sexual abuse allegations and the social worker's decision to reduce visits, and informed the social worker that he would be contacting his attorney. By November 2013, Father had stopped visiting the child, and had hung up on the grandmother when she had called Father to invite him to an awards ceremony where the child would be receiving an award. Father had, however, attended a conjoint counseling session with the child on December 19, 2013. At that time, the child confronted Father about touching him inappropriately when he was younger. Father became defensive, asking the child what evidence he had. The session ended with the child yelling at Father and running out of the room to the grandmother who was waiting in the lobby. The therapist believed that Father did not show compassion for the child's emotional distress.

Father had continued to refuse to provide DPSS with a valid home address because he worried that the grandmother would learn of the address and attempt to have him deported. The social worker reported that his reasoning did not make sense because

the grandmother could have had him deported when he was picking up or dropping the child off from visitations.

The 12-month review hearing was held on January 9, 2014. At that time, the juvenile court found that it would be detrimental to return the child to parental custody and that there was no substantial probability of reunification even if services were extended. The court explained that although the parents had “made strides,” it had “an 11-year-old that has been primarily in the custody of Grandma at no fault to himself. The parents were not there to care for the child due to their own issues.” The court terminated services for both parents, set a section 366.26 hearing, and ordered supervised visitation between Father and the child. The court noted that it would not be decreasing the visitation, leaving that with DPSS, since visitation had always happened, and that it wanted the child to continue counseling with both parents. The court also noted that it did not find the sexual abuse allegations true and that the focus in counseling should be to repair the relationship between Father and the child.

Since the 12-month review hearing, Father never resumed visits with the child and failed to maintain contact with DPSS. On April 18, 2014, the child reported that he did not want to have any visits with Father. The child was happy, comfortable, and healthy in his grandmother’s care, and the grandmother and stepgrandfather were willing and able to adopt the child. The child was less anxious after his visits with Father stopped and was happy to be adopted by the grandparents. The grandparents had raised the child since birth with some sporadic involvement with his parents and the child looked to his



grandparents for love, affection, and protection. The child viewed his grandparents as his parents. The grandparents had also raised the child's older half brother, who still resided in the home. The child and his half brother had a close relationship. The grandparents were dedicated in ensuring the child's educational, emotional, developmental, and medical needs were being met.

The section 366.26 hearing was held on August 28, 2014. At that time, Father's counsel objected to terminating his parental rights and reminded the court that the only finding of fault made against Father was that he had transported the child in a car without a valid driver's license. Father's counsel also argued that there was no evidence showing Father was an unfit parent thereby preventing the court from terminating his parental rights, and requested the court to consider guardianship as opposed to adoption. Through her counsel, Mother submitted on the termination of her parental rights and stated that the child was well cared for by the grandmother and that she wanted the best for the child. The court noted that a finding of risk to the child was not required to terminate parental rights at a section 366.26 hearing and that the child wished to be adopted by his grandparents. The court found the child would likely be adopted and terminated parental rights. This appeal followed.

## II

### DISCUSSION

Father argues that the juvenile court erred by failing to make a finding of parental unfitness by clear and convincing evidence before terminating his parental rights. He

maintains that due process requires that a termination of parental rights order be supported by clear and convincing evidence establishing that a parent is unfit to parent. Assuming, without deciding, Father has not forfeited this issue, we reject Father's contention.<sup>5</sup>

The United States Supreme Court has established that parents have a fundamental interest in the care, companionship, and custody of their children (*Santosky v. Kramer* (1982) 455 U.S. 745, 758 (*Santosky*)) and due process requires that before a state may permanently sever parents' rights to their children, findings of parental unfitness must be made by at least clear and convincing evidence (*id.* at pp. 747-748). Our Supreme Court has held that California's dependency system satisfies *Santosky*'s requirements because before parental rights may be terminated, the juvenile court *must* have made prior findings by clear and convincing evidence that the parent was unfit. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254, 256 (*Cynthia D.*)). "The number and quality of the judicial findings that are necessary preconditions to termination convey very powerfully to the fact finder the subjective certainty about parental unfitness and

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<sup>5</sup> Father appears to be attacking the findings made at the 12-month review hearing setting the section 366.26 hearing. When a superior court sets a section 366.26 hearing, review of all orders issued at the setting order hearing is by extraordinary writ petition, rather than by appeal. (*In re T.W.* (2011) 197 Cal.App.4th 723, 729; *In re Athena P.* (2002) 103 Cal.App.4th 617, 625 [Fourth Dist., Div. Two]; *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1022-1023; § 366.26, subd. (l).) The purpose behind this exception to the normal rule—that post-dispositional orders are reviewable by appeal (§ 395, subd. (a))—is to afford expeditious review on the merits before the juvenile court conducts the section 366.26 hearing. (§ 366.26, subd. (l).) The waiver rule, however, will not be enforced when due process forbids it. (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208; *In re Frank R.* (2011) 192 Cal.App.4th 532, 539.)

detriment required before the court may even consider ending the relationship between natural parent and child.” (*Id.* at p. 256.)

Thus, California’s dependency law does not require a finding of parental unfitness at the section 366.26 hearing when termination of parental rights is contemplated. As our state Supreme Court explained: “Unlike the termination hearings evaluated in *Santosky* . . . the purpose of the section 366.26 hearing is not to accumulate further evidence of parental unfitness and danger to the child, but to begin the task of finding the child a permanent alternative family placement. By the time dependency proceedings have reached the stage of a section 366.26 hearing, there have been multiple specific findings of parental unfitness. Except for a temporary period, the grounds for *initial removal* of the child from parental custody have been established under a clear and convincing standard [citation]; in addition, there have been a series of hearings involving ongoing reunification efforts and, at each hearing, there was a statutory presumption that the child should be returned to the custody of the parent. [Citations.] Only if, over this entire period of time, the state continually has established that a return of custody to the parent would be detrimental to the child is the section 366.26 stage even reached.” (*Cynthia D.*, *supra*, 5 Cal.4th at p. 253, italics added, fn. omitted.) Not only is a finding of parental unfitness not required at the section 366.26 hearing, “the critical findings of parental unfitness, detriment, and the failure of attempts at reunification may not be

reopened or reconsidered at the termination hearing . . . .” (*In re Zeth S.* (2003) 31 Cal.4th 396, 411.)<sup>6</sup>

Father does not dispute these principles or appear to contend the juvenile court failed to make findings of detriment whenever they were statutorily required. Rather, he argues that even when such findings were made, the cumulative findings of fault against Father did not amount to clear and convincing evidence of parental unfitness to support the order terminating his parental rights. Father relies on *In re G.S.R.* (2008) 159 Cal.App.4th 1202 (*G.S.R.*). He also heavily relies on *In re P.C.* (2008) 165 Cal.App.4th 98 (*P.C.*). Both are distinguishable from the present case.

*G.S.R.* involved a noncustodial father who was declared the presumed father of his two sons shortly after the detention hearing. (*G.S.R.*, *supra*, 159 Cal.App.4th at p. 1206.) The boys were taken into protective custody after their mother was arrested for having sex with a minor. (*Id.* at p. 1205.) No section 300 allegations were alleged or proved

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<sup>6</sup> We note that “California’s dependency scheme no longer uses the term ‘parental unfitness,’ but instead requires the juvenile court make a finding that awarding custody of a dependent child to a parent would be detrimental to the child.” (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1211 (*P.A.*)). Detriment is “an infinitely more precise concept” than unfitness because it “ensures the juvenile court’s focus is properly centered on the absence or breakdown of a relationship between a particular parent and a particular child.” (*In re Cody W.* (1994) 31 Cal.App.4th 221, 225.) “‘Unfitness,’ ” on the other hand, “can suggest an individual is not a proper parent under any circumstances” (*ibid.*, fn. omitted) and does not account for “the unique circumstances” of the particular parent-child relationship (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 224, fn. 3). A detriment finding is essentially equivalent to an unfitness finding, for purposes of the parent’s due process rights. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 423; *In re Jason J.* (2009) 175 Cal.App.4th 922, 931, fn. 2.)

against the father, and he was proclaimed to be “nonoffending.” (*G.S.R.*, *supra*, at p. 1207.) The father participated in court-ordered services and he visited with and sought custody of his sons, but was never able to obtain affordable housing that could accommodate them. (*Id.* at pp. 1206-1207.) At the review hearings, the court determined it would be detrimental to place the boys with the father. (*Id.* at pp. 1207-1208.) At the section 366.26 hearing, the father argued his due process rights would be violated if his parental rights were terminated because he was a nonoffending parent who had never been found unfit. (*G.S.R.*, *supra*, at p. 1209.) The juvenile court rejected the father’s claim and terminated his parental rights. (*Id.* at pp. 1209-1210.)

On appeal, the court concluded that the juvenile court violated the father’s due process rights by terminating his parental rights without ever having found he was an unfit parent. (*G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1211-1212.) The court pointed out that the father had always been involved in his sons’ lives and had provided them with financial support even when he was homeless. (*Id.* at p. 1212.) Moreover, the court reasoned that the record “strongly suggest[ed] the only reason [the father] did not obtain custody of the boys was his inability to obtain suitable housing for financial reasons. But poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction.” (*Ibid.*, fn. omitted.) The court also pointed out that section 300, subdivision (b), expressly states: “ ‘[N]o child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter

for the family. . . .’ Put differently, indigency, by itself, does not make one an unfit parent . . . .” (*G.S.R.*, *supra*, at p. 1212.)

The court in *G.S.R.* further concluded that the evidence was insufficient to support the juvenile court’s various detriment findings, principally because the father’s poverty and lack of suitable housing for his sons was an insufficient reason to conclude he was incapable of parenting them, and the agency never made any effort to assist the father in obtaining affordable housing. (*G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1213-1214.) The court reversed the termination order and remanded the matter to the juvenile court to determine whether there were any legally sufficient grounds, at the time of remand, to find it would be detrimental to return the boys to the father. (*Id.* at p. 1215.)

In *P.C.*, the court took *G.S.R.* one step further in reversing a termination order for an “offending” parent who had complied with her case plan and did everything she could do to regain custody of her children but who, like the father in *G.S.R.*, was unable to obtain affordable housing for her children.<sup>7</sup> The court framed the issue as whether the mother’s “poverty alone” or her inability to obtain suitable housing for her children was a sufficient ground to deprive the mother of her parental rights to her children. (*P.C.*, *supra*, 165 Cal.App.4th at pp. 99, 103, 105.) By the time of the 18-month review

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<sup>7</sup> At the jurisdictional hearing in *P.C.*, the juvenile court sustained allegations that the mother had physically abused her children, the father had committed acts of domestic violence against the mother, and the mother had left the children with a caretaker without means of support, knowledge of the mother’s whereabouts, or the time of her return. (*P.C.*, *supra*, 165 Cal.App.4th at p. 100.)

hearing, the mother had completed her case plan and the social worker testified that her lack of suitable housing was the only reason the children could not be returned to her care. (*Id.* at p. 101.) Still, the juvenile court terminated the mother’s services and found by clear and convincing evidence that returning the children to her care “ ‘would create a substantial risk of detriment’ ” to their “ ‘physical and emotional well-being.’ ” (*Id.* at p. 102.) Then, at the section 366.26 hearing, the social worker testified that the mother’s “inability to obtain suitable housing” was the only reason the agency was recommending the children be adopted. (*P.C., supra*, at p. 102.)

In reversing the termination order, the *P.C.* court found *G.S.R.* “on point” because, like the father in *G.S.R.*, the mother’s inability to obtain suitable housing was the only basis for the juvenile court’s detriment findings. (*P.C. supra*, 165 Cal.App.4th at pp. 103, 106.) The court pointed out that if the mother had not completed her case plan and corrected her behavior that led to the children’s dependency, it would have agreed that the detriment findings were “tantamount to a finding of parental unfitness.” (*Id.* at p. 106.) But because the mother had completed her case plan, corrected her behavior, and the social worker had not reasonably assisted her in obtaining suitable housing, the court concluded the juvenile court’s detriment findings, and its findings the agency had provided or offered reasonable services to the mother, were not supported by substantial evidence. (*Ibid.*)

Initially, we note that *G.S.R.* is easily distinguished from this case because the father in *G.S.R.* was a nonoffending, noncustodial parent against whom no jurisdictional

allegations were asserted or sustained. (*G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1210-1211.) Nor does the opinion indicate that the court ever made a detriment finding based on clear and convincing evidence. In short, “no judicial finding of a lack of parental fitness was made . . . .” (*Id.* at p. 1211.) Here, by contrast, Father, who was a noncustodial parent at the time of removal, had sustained a section 300 allegation based on his limited ability to provide a safe environment for the child, such as driving with the child without a license. He was therefore an “offending” parent. Moreover, the juvenile court made removal findings pursuant to section 361, subdivision (c)(1), which provides that a dependent child may not be taken from the physical custody of his or her parents or guardians unless the juvenile court finds by clear and convincing evidence there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child, and there are no reasonable means by which the child’s physical health can be protected without removing him or her from the parents’ physical custody. The court also found by clear and convincing evidence that there was no substantial probability of returning the child to parental custody even if given an additional six months of services. *G.S.R.*, therefore, does not apply here.

*P.C.* is also distinguishable. In that case, the “only reason” the social services agency did not return the children to the mother was the mother’s lack of appropriate housing. (*P.C.*, *supra*, 165 Cal.App.4th at p. 105.) Significantly, the agency in that case “failed to do its part in helping mother find housing” that was suitable to the agency. (*Id.* at p. 106.) Indeed, the social worker actually hindered the mother’s efforts by failing to



timely obtain the mother's signature on a "referral that might have moved mother higher on the low-income housing list . . . ." (*Ibid.*) There was thus insufficient evidence to support the finding that the agency "had provided or offered all reasonable services" to the mother. (*Ibid.*)

Here, the reasons for not returning the child to Father are varied and more complex. Although Father had initially participated in services and visitations with his child as required by the case plan, during his second period of reunification Father had failed to regularly participate in conjoint therapy, visit his child, contact DPSS, and cooperate with DPSS in regard to his home evaluation. Indeed, by the time of the section 366.26 hearing, Father had not visited the child in over nine months. Thus, Father had not completed his case plan. For all these reasons, *P.C.* is distinguishable.

Moreover, contrary to Father's suggestions, parental unfitness or detriment was not found here due solely to his poverty or housing instability or driving the child without a license. Rather, the detriment finding was based on the emotional harm it would cause the 12-year-old child if he was forced to reunify with either parent. The record clearly indicates that the child had refused to visit his father during the second half of the reunification period and that his visits with Father were causing him anxiety. The child also stated that he did not feel safe in Father's presence and that Father did not know him. The child was adamant that he did not want to live with Father and that he wished to be adopted by the grandmother. The child had lived with his grandmother his entire life and he looked to her for love, protection, and support. The child was very bonded and

attached to his grandmother, his stepgrandfather, and his older half brother, who also resided in the home. The record overwhelmingly supports a finding that removing the child from the grandmother's care would cause the child great detriment. As the juvenile court stated, "The Court would note the desires of the child. He's 12 now and old enough to express an opinion and it has been one expressed on occasions more than just today, as to him not wanting to have contact or visits with the father. He's not had a close relationship with the father. That he wants to have the adoption proceed is certainly something the Court would consider in reaching its decision."

*In re Frank R.*, *supra*, 192 Cal.App.4th 532 and *In re Gladys L.* (2006) 141 Cal.App.4th 845 (*Gladys L.*), which Father also refers to, are similarly inapposite. In *In re Frank R.*, the juvenile court sustained a dependency petition as to the children's mother, but found allegations against the father untrue. (*In re Frank R.*, *supra*, at p. 535.) "Accordingly, father was nonoffending." (*Ibid.*) More importantly, the juvenile court never made "the requisite detriment finding by clear and convincing evidence as to father." (*Id.* at p. 539.) Therefore, "due process prohibited the termination of father's parental rights." (*Ibid.*) In *Gladys L.*, the court held that due process prohibited the termination of the father's parental right because the county agency "never alleged that [the child's father] was unfit and the trial court never made that finding." (*Gladys L.*, *supra*, at p. 848.) Here, unlike in *In re Frank R.* and *Gladys L.*, the juvenile court did find, by clear and convincing evidence, that it would be detrimental to return the child to Father's custody.

This case is more like *P.A.*, *supra*, 155 Cal.App.4th 1197, in which the court rejected the argument that because the juvenile court failed to make a finding that a father was unfit as a parent, termination of his parental rights was precluded. Like in this case, the juvenile court in *P.A.* found at the disposition hearing that “by ‘clear and convincing evidence there exists a substantial danger to the children and there’s no reasonable means to protect them without removal from the parents’ custody,’ ” and that the agency had made “ ‘reasonable efforts to prevent removal, and the custody of the children is taken from the parents and placed in the care, custody, and control of the department for placement with a relative.’ ” (*P.A.*, *supra*, 155 Cal.App.4th at p. 1212, italics removed.) Moreover, the court in *P.A.* disagreed with *Gladys L.*’s suggestion that a sustained petition alleging unfitness of each parent was required before termination of parental rights and thus rejected the father’s argument that “the detriment finding at a disposition hearing must be related to a corresponding jurisdictional finding.” (*P.A.*, *supra*, at p. 1212.) The *P.A.* court explained, “[A] child may be declared a dependent if the actions of either parent bring the child within the statutory definitions of dependency. [Citations.]” (*Ibid.*; see *In re A.S.* (2009) 180 Cal.App.4th 351, 361-362 [disagreeing with *Gladys L.* and agreeing with *P.A.* on the same point].)

In sum, to the extent the juvenile court’s detriment findings are reviewable in this appeal, we find no error or violation of due process.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

KING  
J.